

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012110608
v.	
FRESNO UNIFIED SCHOOL DISTRICT,	
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FRESNO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012110688
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE PREHEARING AND HEARING DATES
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On November 16, 2012, Parent on behalf of Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing in OAH case number 2012110608 (First Case), naming the Fresno Unified School District (District). On November 20, 2012, OAH issued a scheduling order for the first Case setting mediation for December 18, 2012, the prehearing conference (PHC) for December 31, 2012, and the due process hearing for January 10, 2013.

On November 21, 2012, District filed a Request for Due Process Hearing in OAH case number 2012110688 (Second Case), naming Student. On November 26, 2012, OAH issued a scheduling order in the Second Case setting mediation for December 6, 2012, the PHC for December 12, 2012, and the due process hearing for December 18, 2012.

On December 6, 2012, the parties filed a stipulated request to consolidate the First Case with the Second Case and a request to continue the due process hearing date for the consolidated matters to February 5, 2013.

APPLICABLE LAW

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when

consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

DISCUSSION

Here, the First Case and Second Case involve common questions of law and fact, specifically, whether the District offered and provided Student a free appropriate public education (FAPE) from at least November 2010 through the present.¹ Student identifies as issues for hearing the District's failure to provide Student with a FAPE by failing to adequately assess him including its refusal to consider Student's private assessments and to respond to his requests for independent assessments; failing to provide Student a placement designed to meet his unique needs including the provision of necessary services and supports; failing to offer services when Student was unable to attend school; failing to develop appropriate individual transition plans; and by changing Student's placement without conducting appropriate assessments. Student additionally identifies claims of procedural violations including the District's failure to provide prior written notices, failure to provide a full and complete copy of Student's educational records, failure to appropriately respond to Student's requests for independent assessments and failure to comply with Student's individual education program. The District's issues encompass many of Student's issues, including its provision of a FAPE for the 2011-2012 and 2012-2013 school years and one additional issue regarding whether the District is authorized to conduct Student's triennial assessment without the consent of Student's educational rights holder.

The parties stipulate that each complaint raises common questions of law and fact. In addition, consolidation furthers the interests of judicial economy as the same parties are involved and many of the same witnesses would be required to testify in each proceeding. Finally, there is the risk of inconsistent rulings if the matters are not consolidated. Accordingly, consolidation is granted. When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by the First Case.

¹ As found by Administrative Law Judge Marian Tully in her Order Denying Motion to Strike dated November 30, 2012, Student's allegations are sufficient to raise a factual issue as to the applicability of the statutory exceptions to the statute of limitations based upon the District's alleged misrepresentations and withholding of information.

The parties jointly request that the consolidated matters be continued. This is the first request for continuance by either party. Good cause for the request is therefore found and the motion to continue is granted.²

ORDER

1. The parties' joint motion to consolidate is granted.
2. The dates previously set for the PHC and due process hearing in OAH Case Number 201211608 (First Case) are vacated.
3. All dates previously set in OAH Case Number 2012110688 are vacated.
4. The parties' joint motion for a continuance is granted. The mediation in the consolidated cases shall be held on December 18, 2012, at 9:30 a.m. The PHC shall be held on January 23, 2013, at 1:30 p.m. and the Due Process Hearing in the consolidated cases shall be held on February 5, 2013, starting at 9:30 a.m. on the first day, continuing day-to-day Monday through Thursday.
5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of Student's complaint in OAH Case Number 2012110608 (First Case).

Dated: December 7, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

² The parties did not follow the OAH directions provided on a continuance form served with the OAH scheduling orders to provide OAH with an estimate of the total number of days necessary for the hearing in connection with their continuance request. The parties will provide this information in connection with their prehearing conference statements.